

**DECISION**



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*14822*  
**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

*[Protest of Marine Corps RFP]*

FILE: B-197859

DATE: September 4, 1980

MATTER OF: U.S. Financial Services, Inc.

**DIGEST:**

Protest that allegedly restrictive benchmark requirement was imposed simply to reduce field of competition to sole source is untimely because protest was not filed within 10 working days after basis for protest was known or should have been known. Moreover, issues presented will not be considered under significant issue or good cause exceptions, 4 C.F.R. § 20.2(c).

U.S. Financial Services, Inc. (USFS) [protests what it views as an attempt by the United States Marine Corps to improperly restrict competition for upgraded disk controllers and drives to a single firm as evidenced by an amendment to its Request for Proposals] (RFP) No. M00027-79-R0040 [which required benchmarking to establish compatibility with host IBM 360/65 systems]. The solicitation sought offers to upgrade ITEL 7830-1 and 7330-1 disk controllers and drives to ITEL 7830-5 and 7330-11 (or TELEX 6833-12 and 6316-11) controllers and drives with double and triple their original design capacity (so-called "double and triple density capability"). Only USFS and ITEL Corporation submitted proposals. Telex Computer Products, Inc. declined to compete after determining that use of its product with the Marine Corps' IBM 360/65 equipment would not be technically feasible.]

[According to the Marine Corps, amendment 0002 was necessary to assure that triple density capability could be provided. USFS, however, argues that the equipment it offered has been commercially available in a triple density configuration for years and has been successfully installed elsewhere.] Noting that the

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[amendment was issued after receipt of initial proposals, USFS views the amendment and attendant benchmarking expense as imposing an undue financial burden on it as a small business, leaving the procurement open only to ITEL. Unwilling to undertake this expense, USFS refused to conduct the benchmark, and instead, wrote the Marine Corps asking that the requirement be waived.]

[We agree with the Marine Corps that USFS's protest was not timely filed.] Even if USFS could have deferred filing its protest beyond the date set for completion of the benchmarking, which we do not decide, USFS lodged its protest with our Office more than 10 working days after being told during a briefing that its proposal was rejected because it had failed to perform the benchmark. Section 20.1(b)(2) of our Bid Protest Procedures requires that a protest in such circumstances be filed not later than 10 working days after the basis for protest was known or should have been known. 4 C.F.R. § 20.2(b)(2) (1980). Although USFS met again with the Marine Corps before that 10 day period elapsed, USFS stated at a conference held by our Office in this matter that the purpose of the second debriefing, which it requested, was to seek clarification and not to protest to the Marine Corps. Cf. Control Data Corporation, B-197946, June 17, 1980, 80-1 CPD 423. Because it appears that USFS's basis for protest was known to it at the time the initial debriefing was held, it was required to file a protest with our Office or the Marine Corps within the following 10 working days, which it did not do.]

Although this Office may consider an untimely case for good cause or because the issues raised are significant to procurement practice or procedures (4 C.F.R. § 20.2(c)), we are of the view that it would not be appropriate to do so here.

[The Marine Corps' need for the benchmark requirement is not a question of general interest to the procurement community which has not been considered previously by this Office and is therefore not an issue significant to procurement practice or procedure.] CAS Reporting

Corporation, B-196359, March 27, 1980, 80-1 CPD 225. The question raised by USFS's underlying complaint was discussed in our recent decision in Information International, Inc., B-191013, August 8, 1980, 59 Comp. Gen. \_\_\_, 80-1 CPD \_\_\_. There we indicated that a contracting activity ordinarily could not require that equipment be benchmarked without reason, just as it cannot require unnecessary descriptive data or reject a proposal which fails to include such data. The significant issue exception, therefore, does not apply.

Finally the good cause exception is limited to circumstances where some compelling reason beyond the protester's control prevents the filing of a timely protest. Dupont Energy Management Corporation, B-195673, October 17, 1979, 79-2 CPD 264. USFS does not allege such circumstances here.

Accordingly, the protest is dismissed. }

*Harry R. Van Cleve*  
for Milton J. Socolar  
General Counsel